Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 74-1575

In the Supreme Court of the United States

OCTOBER TERM, 1975

RICHARDSON INDEPENDENT SCHOOL DISTRICT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
Department of Justice,
Washington, D.C. 20530.

other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for black students or white students.

The school district shall, to the extent necessary to carry out this plan, direct members of its staff as a condition of continued employment to accept new assignments.

(B) Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

(C) If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition, if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for

public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experiences within a reasonably current period. In general, and depending upon the subject matter involved, five years is such a reasonable period.

(D) In the event that the system, in connection with its implementation of this plan, plans to dismiss or demote personnel, as those terms are used in the preceding paragraphs, a report containing the following information shall be filed with the court and served upon the plaintiff:

(1) the system's non-racial objective criteria used in selecting the staff member(s) dismissed or demoted;

(2) the name, address, race, type of certificate held, degree or degrees held, total teaching experience and experience in the system and position during the 1970-71 school years of each person to be dismissed, or demoted, as defined in the preceding paragraphs; and in the case of a demotion, the person's new position

during the 1970-71 school year and his salaries for 1969-70 and 1970-71;

(3) the basis for the dismissal or demotion of each person; including the procedure employed in applying the system's non-racial, objective criteria;

(4) whether or not the person to be dismissed or demoted was offered any other staff vacancy; and if so, the outcome; and, if not, the reason.

III. Majority to Minority Transfer Policy

The school district shall permit a student attending a school in which his race is in the majority to choose to attend the nearest school where his race is in the minority. All transferring students shall be given transportation if they desire it. Transferees must be given priority for space, and the right to transfer shall not be dependent upon space being available.

The parents of each student living in the Hamilton Park Elementary School attendance area shall be notified by mail of the provisions of the majority to minority transfer policy immediately after the entry of this Order, and at least one month prior to each succeeding school year; a copy of each year's letter of notification shall be filed with the Court and served upon the plaintiff.

IV. Transportation

The transportation system of the school district shall be completely reexamined by the superintendent, his staff, and the school board. Bus routes and the assignment of students

to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and other non-discriminatory basis.

V. School Construction and Site Selection

All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent a dual school structure, and further shall be planned and carried out so as to achieve the objective of promoting the continuing, complete desegregation of the school system.

VI. Attendance Outside System of Residence

If the school district grants transfers to students living in this district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

VII. Classroom, Non-classroom and Extra-Curricular Activities.

The school district shall be prohibited from maintaining any classroom, non-classroom, or extra-curricular activity on a segregated basis, so that no student is effectively excluded from attending any class or participating in any non-classroom or extracurricular activity on the basis of race, color or natural origin.

VIII. Protection of Persons Exercising Rights Under this Order

Within their authority, school officials are responsible for the protection of persons exercising rights under, or otherwise affected by, this Order. They shall, without delay, take appropriate action with regard to any student, teacher or staff member who interferes with the successful operation of the provisions of this Order. Such interference shall include harassment, intimidation, threats, hostile words or acts, and similar behavior. If officials of the school system are not able to provide sufficient protection, they shall seek whatever assistance is necessary from other appropriate officials.

IX. Bi-Racial Advisory Committee

A Bi-Racial Committee composed of ten (10) members, five white and five black, will be appointed by the Court. One of the white and one of the black committee members shall be high school students in good standing from the district. The chairmanship of the committee shall alternate annually between a black chairman and a white chairman. The committee shall be charged generally with the responsibility for discussing ways and means of achieving interracial harmony and understanding among the students, teachers, and patrons, and shall function as an advisory body to the school board and the Court. Specifically, the committee should periodically review the transportation system, the selection of school sites, the majority to minority transfer policy, the zoning system, and all of the other requirements set out in this order to ensure their effectiveness in the operation of a unitary system in addition to such other assignments

as the Court may direct. The committee is authorized to hold hearings and make recommendations to the board in connection with these activities.

Before the school board shall submit any proposal of modification of the court-approved student assignment plan to the Court, it shall first submit such proposal to the bi-racial committee; and the bi-racial committee shall, after consideration and study of the proposed modification, submit its findings and conclusions thereon, along with any objections and/or exceptions thereto, or any recommendations or suggestions for improvement, to the school board and the Court.

X. Reporting Provision

(A) The school district shall, on November 1, 1970, and on April 15, 1971, and annually thereafter on April 15 of each succeeding year, until further order of this court, file with the clerk of this court a report setting forth the following:

(1)

(a) The number of students by race enrolled in the school district;

(b) The number of students by race enrolled in each school of district;

(c) The number of students by race enrolled in each classroom in each of the schools in the district.

(2)

(a) The number of full time teachers by race in the district;

(b) The number of full time teachers by race in each school in the district;

(c) The number of part time teachers by race in the district;

(d) The number of part time teachers by race in each school in the district.

(3)

State the number of inter-district transfers granted during the current school semester, or since the last report to the court, the race of the students who were granted such transfers, and the school district to which the transfers were allowed.

(4)

State whether the transportation system, if any, in the district is desegregated to the extent that Negro and White students are transported daily on the same buses.

(5)

State whether all facilities such as gymnasiums, auditoriums, and cafeterias are being operated on a desegregated basis.

(6)

Give brief description of any present or proposed construction or expansion of facilities; including

(a) the exact location and nature of the proposed site acquisition, new construction, or expansion;

(b) The grade levels to be served by the proposed structure, and the anticipated number and race of the students to be assigned;

(c) the action taken by the board pursuant to the submitted proposal and the anticipated dates for: (1) preliminary architectural plans, (2) final plan, (3) construction bids advertised and accepted, (4) site preparation, and (5) construction undertaken.

(7)

(a) State whether the school board has sold or abandoned any school facility, equipment, or supplies having a total value of more than $500.00 since this court's order entered this day.

(b) State whether the school board has sold, abandoned, or otherwise transferred any real property of this school district since this court's order entered this day.

(c) State whether the school board has closed or discontinued use of any school property, building or facility since this court's order entered this day.

(8)

(a) State whether there is a bi-racial advisory committee to the school board in the school district;

(b) If so, state whether the bi-racial advisory committee has submitted recommendations to the board of education;

(c) If so, state the number and disposition of such recommendations;

(d) If a bi-racial committee is in existence, state briefly the areas of the education process in which the bi-racial committee is to function.

(B) Copies of reports are to be served on plaintiff.

X.

For purposes of this plan, service on the plaintiff shall be effective by serving the Attorney General of the United States Department of Justice, Washington, D. C. 20530.

XI. Retention of Jurisdiction

Jurisdiction of this cause shall be, and the same hereby is retained for all purposes, and especially for the purpose of entering any and all further orders which may become necessary for the purpose of enforcing or modifying this order, either or both.

The clerk of this court shall be, and he hereby is directed to mail certified copies of this order by certified mail to all counsel of record and to note such mailings on the docket.

RENDERED and ENTERED this 10th day of September, 1970.

/s/ W. M. Taylor, Sr.
UNITED STATES DISTRICT JUDGE

Appendix "D"

CONSTITUTION, STATUTE AND RULE

CONSTITUTION

Section, Fourteenth Amendment to the United States Constitution.

"No State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

RULE

Rule 52 of the Federal Rules of Civil Procedure: Findings by the Court.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings

of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).